

**MINUTES OF THE APRIL 2014 MEETING
OF THE
ADMINISTRATIVE RULES REVIEW COMMITTEE**

- Date of meeting: The regular, statutory meeting of the Administrative Rules Review Committee (ARRC) was held on Friday, April 4, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa.
- Members present: Senator Wally Horn, Chair, and Representative Dawn Pettengill, Vice Chair; Senators Mark Chelgren, Thomas Courtney, Pam Jochum, and Roby Smith; Representatives Rick Olson, Jeff Smith, and Guy Vander Linden were present. Representative Lisa Heddens was not present.
- Also present: Joseph A. Royce and Jack Ewing, Legal Counsel; Stephanie A. Hoff, Administrative Code Editor; Larry Johnson, Deputy Counsel, Office of the Governor; fiscal staff; caucus staff; and other interested parties.
- Convened Sen. Horn convened the meeting at 9 a.m.
- Fiscal overview** Adam Broich presented the LSA fiscal report.
- HUMAN SERVICES DEPARTMENT** Nancy Freudenberg and Jennifer Vermeer represented the department.
- ARC 1385C No questions on proposed amendments to chs 7, 40 and 41 related to an ineligibility period for FIP participants who access benefits at a prohibited location and to the acceptance of insurance. In response to an inquiry from Sen. Courtney, Ms. Freudenberg listed examples of prohibited locations.
- ARC 1352C No action on amendments to chs 51 and 52 concerning annual adjustments to eligibility and payment levels related to the state supplementary assistance program.
- ARC 1353C No action on amendments to ch 58 pertaining to the Iowa individual assistance grant program (IIAGP). In response to an inquiry from Rep. Pettengill, Ms. Freudenberg stated that assistance for the repair or replacement of appliances has not been changed.
- ARC 1354C No action on 74.15 pertaining to enrollment for IowaCare members in the Iowa health and wellness plan (IHAWP).
- ARC 1368C No questions on proposed amendments to 75.21 concerning the health insurance premium payment (HIPP) program.
- ARC 1355C No action on 75.30 pertaining to the Iowa Medicaid member lock-in.
- ARC 1356C No action on amendments to 75.70 and 75.71 regarding financial eligibility determinations for family planning services.
- ARC 1417C No questions on proposed amendments to 75.1(39)“b”(3) concerning premiums for applicants and recipients under Medicaid for employed people with disabilities.
- ARC 1415C No questions on proposed amendments to 75.23(3) and 75.24(3)“b” pertaining to an increase in the average statewide private-pay cost of nursing facility services and of charges for institutional care.
- ARC 1416C The proposed amendment to 75.24(3)“b”(2) pertains to a decrease in the statewide maximum Medicaid rate for ICF/IDs. In response to an inquiry from Sen. Jochum, Ms. Freudenberg explained how the rate for Medicaid eligibility is determined, including the establishment of a Miller trust, and stated that the decrease in the rate will not exclude persons who are currently Medicaid-eligible.
- ARC 1391C Proposed amendments to 79.1(8) concern the Medicaid pharmacy professional dispensing fee. In response to a request from Rep. Pettengill, Ms. Vermeer stated that the department will consider retaining in the rule the dollar amount of the professional dispensing fee.
- ARC 1366C Proposed amendments to chs 77 and 83 pertain to brain injury (BI) waivers, specifically, online training for BI waiver providers, removal of services from monthly cost limits for certain waivers and removal of the age limit for the BI waiver. Rep. Pettengill expressed the hope that the budget will address the need for services by persons on the waiting list whose number is greater than the number of persons who already receive services.
- ARC 1357C No action on amendments to chs 95 and 99 regarding Iowa supreme court guidelines for the establishment and modification of child support.

Human Services Department (continued)

ARC 1365C No questions on proposed amendments to 170.4(2)“a” regarding the annual update of the child care assistance (CCA) sliding fee schedule.

ECONOMIC DEVELOPMENT AUTHORITY Shawna Lode and Kristin Hanks represented the authority.

ARC 1380C Proposed ch 42 pertains to the Iowa tourism grant program. Sen. Chelgren expressed disappointment with the scoring criteria and recommended that the criterion regarding the quality and impact of the program outweigh the other criteria. In response to an inquiry from Sen. Courtney, Ms. Lode stated that it is likely the authority has not received any public comment because interested parties had the opportunity for input prior to promulgation of the Notice of Intended Action.

ARC 1373C No action on amendments to chs 71 and 187 concerning the targeted jobs withholding tax credit program.

EDUCATION DEPARTMENT Mike Cormack and Laurabelle Sherman-Proehl represented the department.

ARC 1409C Proposed amendments to ch 44 pertain to school buses. Mr. Cormack stated that he will relay to the transportation director and senior staff Sen. Courtney’s suggestion that a study of seatbelt use in school buses be considered.

ARC 1394C Proposed amendments to ch 64 concern the child development coordinating council. In response to an inquiry from Sen. Jochum, Ms. Sherman-Proehl stated that the child-teacher ratio in the statewide voluntary preschool program is one teacher to ten children and in the at-risk program, one teacher to eight children.

ARC 1396C Proposed amendments to ch 67 pertain to educational support programs for parents of at-risk children. In response to an inquiry from Rep. Olson, Mr. Cormack stated that the language in 67.10 will be revised to explain the time frame for notification of applicants regarding grant proposal approval.

EDUCATIONAL EXAMINERS BOARD Darcy Lane and Joanne Tubbs represented the board.

ARC 1378C Proposed amendments to 11.6 pertain to the board’s decision to set a case for hearing. Ms. Lane explained that the board received a disciplinary complaint and decided not to seek formal disciplinary action or set the case for hearing. The complainant then filed a petition for judicial review of the board’s decision not to pursue the complaint. In its initial inquiry, the Polk County District Court reviewed the rule to determine whether it sets forth factors that establish probable cause to move forward to hearing. The court stated that the rule does not define probable cause and remanded the matter to the board, stipulating that if there had been any technical violation of the ethics code, the board would be obligated to set a case for hearing. On the advice of the board’s representative from the office of the attorney general, the board proposes to amend the rule to include four factors related to probable cause to be considered by the board in the review of an ethics complaint. The review may result in setting the case for hearing and possible formal action against a practitioner’s or administrator’s license.

Discussion pertained to the decision-making processes of and possible actions that may be taken by a local school district board and by the state board, the content and purpose of confidential information in employment and licensure files, a practitioner’s and administrator’s rights of appeal to the local board, and the purpose for the amendment.

In response, Ms. Lane explained that a local board may take action against a practitioner’s or administrator’s employment and that the state board may take action against a practitioner’s or administrator’s license; that the state board may review but not overrule a decision by a local board; that when the state board does not set a case for hearing and closes a case, the state board may send to the practitioner or administrator a letter of education or a letter of guidance that sets forth the board’s concerns and that is to be retained in the practitioner’s or administrator’s licensure file; that either a practitioner or an administrator may appeal a local board’s decision to the local board; and that the purpose for the amendment is to set forth four factors that comprise the state board’s concept of probable cause.

Rep. Olson requested that the committee be provided a copy of the Polk County District Court ruling.

Educational Examiners Board (continued)

- ARC 1374C No action on an amendment to 13.9(3) pertaining to a minimum grade point average (GPA) related to the issuance of a teacher intern license. Sen. Chelgren commended the amendment. Rep. Vander Linden expressed a preference for removal of the minimum GPA requirement from the rule.
- ARC 1379C No questions on a proposed amendment to 22.6(5) pertaining to the addition of an experience requirement to convert an initial school administration manager (SAM) authorization to a standard SAM authorization.

ENVIRONMENTAL PROTECTION COMMISSION Christine Schwake represented the commission.

- ARC 1370C No questions on a proposed amendment to 61.2(2)“g” pertaining to water quality certification for reissued regional permit 7 and for other nationwide and regional permits.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA Megan Tooker represented the board.

- ARC 1390C No action on an amendment to 4.44(1) pertaining to the prohibition on campaign contributions from corporations.
- ARC 1389C No action on an amendment to 9.1(1) regarding the supporting documentation for a complaint. In response to an inquiry from Sen. Horn, Ms. Tooker explained that the board decided 20 pages of documentation would afford sufficient volume for providing evidence to move forward on a complaint and that the board may request additional information when the board determines that a complaint is founded.

INSPECTIONS AND APPEALS DEPARTMENT David Werning represented the department.

- ARC 1376C No action on amendments to 69.28(6) and 70.28(6) pertaining to limitations on food activities for assisted living and adult day services programs not licensed as food establishments.
- ARC 1413C No questions on proposed 57.7 regarding the establishment of a special classification within a residential care facility for memory care.
- ARC 1398C No action on amendments to ch 58 regarding administrators, services, and classification of violations related to nursing facilities.

CHILD ADVOCACY BOARD Jim Hennessey represented the board.

- ARC 1375C No action on the renumbering of ch 4 as ch 5 and the adoption of ch 4 relating to the court appointed special advocate program.

IOWA FINANCE AUTHORITY Mark Thompson represented the authority.

- ARC 1400C No action on the adoption of ch 44, Iowa agricultural development division, and the rescission of former agricultural development authority chs 1 to 11.

PHARMACY BOARD Terry Witkowski represented the board.

- ARC 1406C No action on amendments to ch 4 regarding pharmacist-interns. In response to an inquiry from Sen. Jochum regarding public comment, Ms. Witkowski stated that the board annually reviews the status and accreditation of out-of-state colleges of pharmacy and accepts degrees only from colleges that maintain accreditation standards and guidelines set by the Accreditation Council for Pharmacy Education (ACPE) and that the commenter was satisfied by this response.
- ARC 1411C No questions on a proposed amendment to 8.3(3) pertaining to pharmacist-documented verification. Rep. Pettengill commended the amendment, the two-year record retention requirement and remote pharmacies in general.
- ARC 1408C No action on 10.38(2) pertaining to the temporary classification as Schedule I controlled substances four synthetic cannabinoids and ten synthetic cathinones in conformance with recent control of these same substances by the U.S. Department of Justice.
- ARC 1407C No questions on proposed amendments to 10.35 concerning an annual inventory of controlled substances and the reporting of such inventory when there is a change in ownership of a pharmacy.

INSURANCE DIVISION Mark Crandall represented the division. Other interested parties included Bill Wimmer on behalf of the Iowa Pharmacy Association and Hy-Vee.

- ARC 1399C No questions on the termination of proposed amendments to ch 59 regarding the duties of pharmacy benefits managers and insurers.

Insurance Division (continued)

In response to an inquiry from Sen. Courtney, Mr. Crandall stated that the decision to terminate the notice resulted from public comment regarding the statutory authority of the commissioner to set at 15 days the prompt-pay terms of electronically submitted clean claims.

ARC 1412C

Proposed amendments to ch 59 pertain to pharmacy benefits managers (PBMs).

Mr. Wimmer stated that the prompt-pay provision that requires payment in 20 days presents a cash-flow problem for pharmacies and that the statutory authority exists to allow the prompt-pay provision to be changed to 15 days.

Discussion followed in response to Sen. Horn's inquiry regarding ways to address the billing policies of third-party payers that require payment for unused prescription medications following a patient's death. Mr. Wimmer offered to provide the committee with more information about billing policy. Sen. Chelgren suggested that policy be developed to allow prescription medications whose cost is at or over a certain dollar amount to be returned. In response to an inquiry from Sen. Courtney, Mr. Wimmer stated that methods for both disposal and reuse of prescription medications are under discussion, e.g., a take-away program proposed in human services department legislation.

PUBLIC HEALTH DEPARTMENT Carmily Stone and Barb Nervig represented the department.

ARC 1364C

No questions on proposed ch 61, state mechanical code.

ARC 1414C

No questions on proposed ch 37 and amendments to chs 38 to 40 regarding the physical protection of category 1 and category 2 quantities of radioactive material.

ARC 1401C

No action on amendments to 41.6 and 41.7(7) regarding workstations, physician training and quality control related to mammography and stereotactic breast biopsy equipment.

ARC 1388C

The notice to adopt ch 52, vision screening, has been terminated. In response to an inquiry from Sen. Courtney, Ms. Nervig stated that based on public comment, the department found that further clarification of the vision screening requirements was needed and that the department would submit a new notice in the near future.

ARC 1402C

No action on 95.6(2) concerning overpayment of fees.

ARC 1392C

No questions on proposed ch 108, medical residency training state matching grants program.

ARC 1403C

No action on amendments to 127.4 regarding reimbursement for certain autopsies.

ARC 1404C

No action on amendments to 131.3(3) and 132.2(4) related to the scope of practice for emergency medical care providers.

ARC 1405C

No action on ch 206, Iowa health information network.

RACING AND GAMING COMMISSION Brian Ohorilko represented the commission.

ARC 1393C

Proposed amendments to chs 1 and 5 pertain to the organization and operation of the commission, forms, and the provisions for a first-aid room. Following Mr. Ohorilko's summary of the amendments, committee members inquired about changes in the term limits for the chairperson, the use of Robert's Rules of Order, the catchwords of 1.5(6), application for season approvals, and the required certification of first-aid personnel.

In response, Mr. Ohorilko stated that the change in the chairperson's term is intended to afford consistency and continuity amid unprecedented challenges. He stated that it is the commission's understanding that the attorney general has not objected to the use of Robert's Rules of Order and that this guide to the conduct of public hearings should be used by the commission. Mr. Ohorilko asserted that the form described in 1.5(6) is not an application; it is a request for the commission to approve a plan. He explained that the goal for first-aid personnel is certification or registration that includes the use of defibrillators, which are available in every facility.

Sen. Courtney, Rep. Pettengill and Rep. Olson expressed opposition to the change in the term limits for the chairperson. Sen. Courtney stated that the operations must be kept above-board and that the former chair would remain on the board and would continue to assist in addressing the challenges. Rep. Olson suggested that to address the current challenges, the commission consider the sunset of the amendment that changes the term limit from two to four consecutive one-year terms.

Racing and Gaming Commission (continued)

Rep. Pettengill questioned the amended catchwords in 1.5(6) and requested that the commission revisit the amendment, noting that all of the subrules in 1.5 begin by describing “a form” though the catchwords incorporate the word “application.”

REVENUE DEPARTMENT Victoria Daniels represented the department.

ARC 1362C No questions on proposed amendments to chs 10, 67 and 68, which are related to motor fuel, specifically, the penalty for violations, administration, tax rates, and distributors’ and dealers’ right to blend.

ARC 1382C No action on 80.30, the business property tax credit.

ARC 1363C Proposed ch 237 pertains to the reinvestment districts program. Ms. Daniels clarified for Sen. Chelgren the use of state tax dollars related to the program.

TREASURER OF STATE Jake Friedrichsen represented the treasurer of state.

ARC 1383C No questions on proposed amendments to ch 15 pertaining to required public funds custodial agreement provisions.

UTILITIES DIVISION Cecil Wright represented the division.

ARC 1359C No action on amendments to chs 10, 15, 19, 20, 25 and 45 pertaining to natural gas and electric safety standards.

Mr. Wright clarified for Rep. Pettengill that the proposed amendments to 19.14 were not adopted pending a more comprehensive revision of the compressed natural gas providers (CNGP) rules and for Sen. Chelgren, the statutory authority of the Iowa utilities board related to the initiation and certification of a liquefied natural gas business.

VETERINARY MEDICINE BOARD Margaret Thomson represented the board.

ARC 1377C No questions on proposed amendments to chs 1 and 12 regarding veterinary standards of practice.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT Margaret Thomson represented the department.

ARC 1381C No action on amendments to chs 90 and 91 pertaining to other financial statements for grain warehouse operators and grain dealers.

VOTER REGISTRATION COMMISSION Sarah Reisetter represented the commission.

ARC 1361C No action on an amendment to 2.16 pertaining to revision of the official Iowa voter registration application.

COUNTY FINANCE COMMITTEE Carrie Johnson represented the committee.

ARC 1372C No action on amendments to chs 3 to 5 pertaining to an update of terminology and reporting standards. Rep. Pettengill commended the update to the Governmental Accounting Standards Board (GASB) and the related forms.

MANAGEMENT DEPARTMENT Linda Leto represented the department.

ARC 1371C No action on amendments to chs 1 and 5 to 8 and the rescission of chs 10 and 15 regarding an update of department organization and address.

TRANSPORTATION DEPARTMENT Stuart Anderson represented the department.

ARC 1351C No action on amendments to chs 700, 710 and 715 to 717 pertaining to eligibility, funding, the application process, project review, approval and administration related to aviation programs. Rep. Pettengill commended the thorough review and the department’s expansion of opportunity to the state’s public airports.

WORKFORCE DEVELOPMENT DEPARTMENT Joe Bervid represented the department.

ARC 1367C No action on amendments to 24.13 and 24.16 regarding vacation pay that is deductible from unemployment. Mr. Bervid clarified for Sen. Courtney the method for calculation of vacation pay to be deducted from unemployment benefits and for Rep. Olson, that a bonus is not deductible from unemployment benefits because it was paid for past service.

Committee business The minutes of the March 7, 2014, meeting were approved.
The next meeting was scheduled for Tuesday, May 13, 2014, at 9 a.m.
Rep. Pettengill stated that committee members may notify the chair or vice chair up to two days before the meeting if rule makings that have preliminary agenda placement under No Representative Requested to Appear should be reviewed.

Adjourned The meeting was adjourned at 12:45 p.m.

Respectfully submitted,

Stephanie A. Hoff

APPROVED:

Chair Wally Horn

Vice Chair Dawn Pettengill